

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR  
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 954/JP/2018  
निर्धारण वर्ष / Assessment Year :2012-13

Ramesh Chand Mittal, 172, Vallabh Bari, Kota-324007 (Rajasthan)	बनाम Vs.	I.T.O., Ward 2(2), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACTPM 0075 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B.L. Bhojwani (CA)  
राजस्व की ओर से / Revenue by : Shri Karni Dan (JCIT)

सुनवाई की तारीख / Date of Hearing : 31/05/2019  
उदघोषणा की तारीख / Date of Pronouncement : 11/06/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Kota dated 13/04/2018 for the A.Y. 2012-13 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

Following grounds have been taken by the assessee:

- "1. That the Id. CIT(A), on the facts and in the circumstances of the case and in law, has erred in upholding the addition of cash gift of Rs. 4,00,000/- made by the Assessing Officer U/s 68 of the Income Tax Act, 1961.
2. That the Id. CIT(A), on the facts and in the circumstances of the case and in law, has erred in upholding the disallowance of Rs.

*1,56,538/- made by the Assessing Officer relating to interest paid by the assessee on unsecured loans.”*

2. Rival contentions have been heard and record perused. The facts in brief are that the assessee is engaged in the business of wholesale Kirana business. During the course of scrutiny assessment, the A.O. observed that the assessee had received a cash gift of Rs. 4,00,000 from his mother-in-law Smt. Premi Devi on 31.05.2011. The donor is assessable to Income Tax. The AO has added this gift as undisclosed income of the assessee by observing as under:

(i) The gift has been made in cash.

(ii) The gift is shown to have been received on 31.05.2011 but in the Gift Deed, the date is mentioned as 28.09.2011.

(iii) The annual income of the donor was only Rs. 2,49,712.

(iv) The donor was not produced before the AO for examination.

3. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. against which the assessee is in further appeal before the ITAT.

4. It was argued by the Id. AR of the assessee that the addition made by the Id. AO is based on suspicion, presumptions and

assumptions and not on any concrete evidence or circumstance. Suspicion, however strong, cannot take place of proof. There is no bar in law on cash gifts.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the course of assessment, it was explained to the AO that the gift was received on 31.05.2011 by the assessee from his mother in law who was having sufficient cash in hand at the time of giving gift as per income returned during the year. The Gift Deed was written on 28.09.2011 and due to oversight, this very date was mentioned as the date of gift in the Gift Declaration. The assessee also furnished a duly sworn and affirmed Affidavit, dated 04.02.2015, to this effect. An Affidavit is an important piece of evidence to prove or to disprove a fact which cannot be proved or disproved by documentary evidence. The Affidavit too has been summarily rejected by the AO.

6. It is held in the under-noted decisions that it is not open to the department to disbelieve the contents of an affidavit unless the person who gave the affidavit was put to cross examination and, if put to cross examination, not unless the Assessing Officer has found fault with the same :

- *Mehta Parikh & Co. v. CIT* (1956) 30 ITR 181 (SC)
- *Dilip Kumar Roy v. CIT* (1974) 94 ITR 1 (Bom.)
- *Rajshree Synthetics P. Ltd. v. CIT* (2002) 256 ITR 331 (Raj.)

7. From the record we found that income of the donor during the year was Rs. 2,49,712/-. She was mother in law of the assessee having sufficient cash in hand as on 31/03/2011. For this effect, the assessee has also filed statement showing availability of cash on the date of gift. The donor was aged about 71 years at that time. However, due to poor health, she could not appear before the A.O. Mere non-appearance before the A.O. could not be made reason to disbelieve the genuineness of gift when other documentary evidences so filed support the fact of gift. From the record we found that the confirmation from the donor, copy of acknowledgment of return of income and computation of income were submitted to the Id. AO during the course of the assessment proceedings.

8. In view of above discussion, we restore the matter back to the file of the A.O. for deciding the issue afresh in terms of our above direction.

9. During the course of assessment, the A.O. has also disallowed interest of Rs. 1,56,538/- on the plea that interest bearing funds have

been diverted for non-business purposes. From the record, we found that before the A.O. the assessee has submitted statement of interest free fund available with the assessee in the form of his capital to the tune of Rs. 26,08,598/- and also interest free unsecured loan of Rs. 25,62,288/-. Thus, the interest free funds available with the assessee was much more than the interest free amount given by him. Accordingly, no disallowance of interest is warranted. We direct accordingly.

10. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 11<sup>th</sup> June, 2019.

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 11<sup>th</sup> June, 2019

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ramesh Chand Mittal, Kota.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 2(2), Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 954/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar